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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re S.M., a Person Coming Under the Juvenile  
Court Law.

MARIPOSA COUNTY DEPARTMENT OF  
HUMAN SERVICES,

Plaintiff and Respondent,

v.

W.M.,

Defendant and Appellant.

F045812

(Super. Ct. No. 1941)

**OPINION**

APPEAL from a judgment of the Superior Court of Mariposa County. Wayne R. Parrish, Judge.

Teri A. Kanefield, under appointment by the Court of Appeal, for Defendant and Appellant.

Allen, Polgar, Proietti & Fagalde and Michael A. Fagalde for Plaintiff and Respondent.

W.M. (Mother) appeals from orders adjudicating her son, S.M., a dependent of the juvenile court and removing him from her custody. Mother contends (1) the petition failed to state a cause of action, (2) insufficient evidence supports jurisdiction over S.M., and (3) insufficient evidence supports the removal of S.M. from Mother's custody. We will affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Mother had a long history of involvement with child protective services (CPS) in various counties. She had been the victim of incest by her father, which resulted in her first pregnancy, and was placed in a foster home. Then, at one time or another, three of her four children had been removed from her custody. Her own experiences and the tragic death of one of her children instilled in her a deep distrust of the system.

When S.M. was about three years old, he was removed from Mother's custody and placed with his father. S.M. was already a difficult and undisciplined child. When his father went to prison, S.M. stayed with his grandfather, who eventually became too afraid of S.M. to attempt to discipline him. S.M. would lock him out of the house, kick him, and throw rocks at him.

Meanwhile, another child was removed from Mother's care. Mother took required parenting classes but she ultimately failed to reunify with the child. The child was placed with the child's father, who apparently killed the child.

When S.M. was about seven years old, his grandfather's health deteriorated and he returned S.M. to Mother. While with Mother, S.M.'s behavior seemed to worsen. A relative reported that S.M. broke Mother's arm and hand twice. Sometime in 2003, Mother brought S.M. back to the grandfather and asked him to take S.M., but the grandfather refused.

When Mother had trouble controlling S.M., she would call the sheriff's department. In July 2003, as a result of one of those calls, 11-year-old S.M. spoke to a social worker from the Mariposa County Department of Human Services (the

Department). S.M. said he was very angry with Mother and with his younger brother. Mother made him watch the brother all the time. S.M. had to take him everywhere he went and would get in trouble if he refused. Other times, Mother would make him stay in his room for hours at a time, or for the whole day. That day, Mother had told him to clean his room and he just got mad and started hitting her.

Mother told the social worker she was very frustrated about all the bad things that had happened to her and she did not know why things could not just go right for a change. She did not know why she kept getting involved in relationships with “losers.” She was tired of her house being dirty and she wanted more help from S.M. She told the social worker she wanted her to take S.M. so she could have some respite, but then she changed her mind. A few days later, Mother said S.M. had thrown a rock at her head.

On September 15, 2003, Mother again called the sheriff to complain about S.M. When the deputy arrived, Mother told him her son was once again out of control. She said they had argued and then S.M. hit her in the face and slammed her finger in the door. He ripped the phone out of the wall when his younger brother tried to call 911. Mother told the deputy several times that she had done everything she could do for S.M. but she still could not control him. She said she could not do this anymore. She was concerned that S.M. was getting big enough to harm her when he lost control. She asked that S.M. be removed from the house. The deputy believed another altercation would occur if he did not remove S.M., so he detained him and transferred him to a social worker.

S.M. told the social worker he was tired of the yelling and screaming, which kept him from doing his homework, and he was afraid he might hurt Mother. S.M. said Mother sometimes hit him when he refused to mind her. He said Mother always fought with her boyfriends and he felt compelled to protect her from them, but she always told him to stay out of it. The boyfriends generally ended up in jail. S.M. said he had frightening dreams that Mother was dead. Once, after such a dream, he went to Mother for comfort but they ended up fighting until he hit her. He said she knew how to make

him so angry that he hit her. He said he had gone to counseling, but Mother told him to lie to the counselors; if he told them how he really felt he would get in trouble. He said Mother told him he was too old for the hugs he requested from her.

The social worker recommended a voluntary 30-day placement of S.M., as a respite, during which time the family would receive counseling. Mother instead agreed to a two-week placement. However, when the social worker asked Mother to meet her to develop a case plan, she completely withdrew and stated she would not do anything. The social worker told her that without a case plan and a signed voluntary agreement to place S.M., she would have to return S.M. to Mother or detain him. Mother became very upset and left the building.

On September 17, the Department filed a juvenile dependency petition pursuant to Welfare and Institutions Code section 300<sup>1</sup> on behalf of S.M. The petition alleged that S.M. was suffering, or was at substantial risk of suffering, serious emotional damage evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or others as a result of Mother's conduct and because he had no parent or guardian capable of providing appropriate care. (§ 300, subd. (c).)

At the detention hearing, Mother stipulated to S.M.'s detention. S.M. was originally placed in a foster home, but was moved to a group home on September 23. On October 10, he was involuntarily committed to an acute psychiatric hospital because he was deemed a threat to himself and others. He was diagnosed with posttraumatic stress disorder and intermittent explosive disorder. The court authorized the administration of psychotropic medication.

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise noted.

In response to S.M.'s hospitalization, Mother posted flyers throughout the town of Mariposa. The flyers stated that S.M. had broken her finger and should have been put in juvenile hall, not in a mental hospital, and that CPS had allowed the death of her daughter. She wanted S.M. to come home and pleaded, "Please don't let CPS kill another one of my children." The court ordered Mother to remove the flyers.

Later in October, when S.M. was back in the group home, the social worker there repeatedly attempted to make telephone contact with Mother so S.M. could visit with her. Mother had agreed to be available by telephone on several dates, but she never answered the phone. The social worker attempted at least three calls per week.

In the jurisdictional report, the social worker noted that Mother was having extreme difficulty accepting services. She could not articulate why S.M. was behaving in such a dangerous and abusive manner toward her and she did not acknowledge any responsibility for parenting issues she might have. She had been involved with CPS with four children from four different fathers, and now had custody of only one child. She had been extremely verbally abusive to most of the professionals working with her on the case. She refused to work with the Department and accused them of killing her daughter.

The social worker concluded that S.M. was an emotionally damaged child and that Mother had shown a pattern of pathogenic care toward him. The worker listed Mother's extensive history of drug use, her inability to take responsibility for her own failures, the repeated removal of her children, the repeated failures to reunify with her children, her exposure of her children to domestic violence and chaotic relationships, and her punitive attitude toward S.M.'s emotional problems. Mother had also been a victim of emotional abuse and pathogenic care by her parents. She continued to become involved with violent men. Mother was also a victim of the tragic loss of her daughter. The social worker concluded that S.M. was a victim of Mother's choices and her inability to adequately parent him.

An addendum report, filed November 6, 2003, stated that S.M. had become a problem at the group home due to his aggressive, defiant, and extremely violent behavior and that he was scheduled to be removed the following day. His behavior had worsened after a visit with Mother. One day, while his grandmother was visiting, he started yelling, "The only reason I'm here is because of my fucking mom. It's all her fucking fault that I'm mad cause she's always hitting on me, slapping me, kicking me and throwing me around. She's a fucking bitch and I hate her fucking guts!!! The only reason I hit her is because I got sick and tired of her hitting me and slapping me and screaming in my face all the fucking time! She's probably doing the same thing to [my younger brother] now and he's gonna be all fucked up too. I hate her, I hate her fucking guts. I already have brain damage from her socking me all the damn time and now I'm getting socked again." S.M. then sobbed uncontrollably.

Mother continued to be unavailable for telephone visits with S.M. She had attended only one counseling session. She continued to refuse to sign any documents to work with the Department. There was no evidence she had made any further effort to treat the problems that led to S.M.'s removal.

A second addendum report was filed on November 7, 2003, stating that S.M. had been placed in a group home in Fresno.

A third addendum report, filed November 17, 2003, noted that S.M. was still exhibiting extremely disruptive and violent behavior. The results of S.M.'s recent psychological evaluation showed he suffered from various psychological disorders.

A fourth addendum report, filed on December 2, 2003, reported that S.M.'s behavior at the new group home had been aggressive, defiant, and assaultive since he had arrived. On several occasions, he required physical restraint. The social worker noted that S.M.'s history indicated he had exhibited behavioral problems as early as three years old, and that both parents had had the opportunity to have him evaluated, but there was

no documentation that either had sought professional help to assist them in caring for S.M.

On January 4, 2004, the court again authorized administration of psychotropic drugs for S.M.

A fifth addendum report, filed on January 22, 2004, stated that S.M. continued to have problems at the group home, resulting in 28 incident reports. The staff at the home reported S.M. required frequent restraining to protect himself and others. He had attempted to strangle himself. The psychologist concluded that Mother was a potential trigger for S.M.'s bad behavior and that she might not have a good understanding of his problems and how she could be contributing to them. S.M.'s placement was terminated and he was moved to a new group home in January. During an interview with a psychiatrist, S.M. said, "I want to die, go to heaven and come back and have no parents." The report also noted that Mother had not seen S.M. for six weeks and refused to cooperate to arrange a visit. She did, however, request a scheduled Christmas visit, but then failed to show. She later said she had been "too busy moving and stuff." Mother refused to provide the Department with her new address, saying it was none of the Department's business. She said she would not do anything that the Department asked. The social worker concluded that Mother continued to be completely unwilling to cooperate with anyone to develop a plan for the eventual safe return of S.M., and that Mother continued to contribute to S.M.'s emotional trauma by her complete lack of empathy for him. S.M. had been very upset that Mother had not returned his telephone calls or attempted to see him. As a result, he had not mentioned Mother for over two weeks.

A sixth addendum report, filed on February 6, 2004, stated that S.M. had benefited greatly from his new medication. S.M. had left telephone messages for Mother, but she had not returned his calls or attempted to contact him in over two months. S.M. was traumatized by his perceived rejection and abandonment by Mother.

A seventh addendum report, filed on March 2, 2004, reported that Mother showed up at the home unannounced on February 8 and was allowed to visit S.M. The next day, Mother requested to see S.M. The social worker informed her she would need to take a drug test before the visit. When she arrived and was told she could not see S.M., she left to get a witness. When she returned, she became very aggressive and started yelling profanities at the social worker. She told the social worker that S.M. had a bruise on his arm and they should take pictures of it to document it. Mother yelled, "I hate you, look in my eyes, you bitch. I hate all the CPS people ... you have ruined my life, you are killing my son." The social worker calmly told her to leave and to appear in court to address her issues. Mother and her witness left yelling and cursing. When the social worker approached S.M. about the bruise, he told her he had been aggressive and needed to be restrained. When he jerked his arm away, he hit his arm on the wall or door frame.

A week or so later, Mother later requested an arranged visit with S.M. on his birthday, but she again failed to show or call.

On March 3, the jurisdictional hearing took place. The Department argued the petition was based on the second prong of section 300, subdivision (c) -- that the child had severe emotional stress and Mother was incapable or has not provided appropriate care. The social worker testified that when she interviewed Mother on about September 15, 2003, Mother asked for assistance in parenting S.M. She said she could not handle him and was overwhelmed because he was out of control. She said he would not mind her and had assaulted her. She said they had already done some counseling but that it had not been effective. At a subsequent meeting, the Department offered Mother family counseling during the two-week respite she had agreed to. But when she was asked to sign the documents required for those services, she refused to sign anything and she left the building. When the social worker called the counselor, she learned that he had only counseled S.M. once and S.M. had not received consistent counseling.



Mother testified that she signed two documents for voluntary services, including counseling, but refused to sign the third document because it mentioned a six-month case plan. She did not want the Department to do to S.M. what it had done to her and she did not want to work with the Department for six months. She wanted to do it on her own. She said she and S.M. had received four counseling sessions, as she had told the social worker. Mother had taken parenting classes that failed to teach her how to deal with a child with severe mental problems. She believed S.M. was such a child. But she agreed she had in fact taken those classes because another of her children had been removed from her care, not because of her problems with S.M. She explained she had not sought more counseling for her and S.M. because the waiting list for counseling was often two weeks or longer and because S.M. was busy with other activities, such as football.

Mother said she would call the sheriff because S.M. refused to do his chores, became out of control, and would not take her seriously. She expected the sheriff to help by making S.M. mind her.

The court found that S.M. suffered severe emotional distress. Based on all the evidence, including Mother's testimony, the court concluded that Mother, despite her efforts, was totally unable to provide appropriate care to prevent further emotional damage or stress to S.M. She could not cooperate for S.M.'s benefit, and she could not give up control of the situation. She was unable to seek appropriate care for S.M. The court found the allegations of the petition true and took jurisdiction over S.M.

The dispositional report, filed on March 12, 2004, stated that S.M. had been moved to a different group home on December 18. He still required intensive supervision but his behavior continued to improve. Although he was not able to attend public school, his academic performance was also improving. S.M. stated he wanted to live with Mother and seemed to deny her inability to provide a home for their family. However, he said he was getting the help he needed and should stay in the home for a longer period. Mother continued to state that she would not cooperate with the

Department in any manner. She seemed to believe that she did not need any help with S.M. and could manage without court intervention. A case plan had been developed without Mother's cooperation and she again refused to sign it. The social worker recommended that S.M. remain in the group home until both he and Mother accepted responsibility for their actions and addressed their own issues.

At the dispositional hearing on May 27, 2004, Mother testified that S.M. would receive better care if he were placed with her. She had visited S.M. on several occasions and noticed his bruises and concluded his physical restraint amounted to abuse. She also believed his medications were ruining him and could cause brain damage. She did not believe in medicating children. She refused to discuss S.M.'s medication with the Department psychiatrist.

Mother planned to involve S.M. in a Big Brother program because she thought that at the time of his detention he only needed a positive male role model in his life. If she had had "the chance to explore [her] options, [she] could have done that for him." She wanted the chance to raise her son because she was the only one willing to "raise him in the right way, take him to church on Sundays and do right by him." However, Mother had not yet spoken to anyone in the Big Brother program because she did not know where she stood with the case. She also had not taken any classes or programs to improve her ability to deal with S.M. because she did not trust anyone at the time. She had not done anything to improve her skill or ability to deal with S.M.'s outbursts.

She believed the Department had ruined S.M.'s life and she did not want the Department to continue doing so. She said, "I feel his life has been ruined by CPS. And if I keep on letting this go with my children, they're going to ruin my children's life and my children's children's life. And I can't do that. I can't keep on doing that."

Mother explained that she had called the sheriff because she was frustrated when S.M. was out of control and she did not know what to do. She was trying to "scare him

straight,” but when that did not work, she felt she should have been given another chance to explore another option.

Mother said she declined the Department’s offers of services because she “wanted to explore [her] options and not just have to go through the Department because of [her] bad experiences with the Department.” She originally accepted the Department’s offer, but changed her mind when she learned the Department wanted to create a six-month case plan. She explained: “I’m not going to lay down and do whatever they want me to do for six months when I was doing a good job on my own....”

She admitted her bad experiences had been with CPS departments in other counties and this was her first experience with the Department in Mariposa, but she said all the CPS departments in California were the same; they all were “messed up.” She held that opinion because of the death of her daughter and because she herself had grown up in foster care. She said, “Do you think if I was raised right through the system, through CPS, I’d be here?”

Mother testified she had been staying with a friend for a week and was trying to get her own place. The friend’s home had one bedroom, currently used by Mother and S.M.’s younger brother. The friend slept on the couch. Mother admitted she did not have a place to put S.M., but suggested she could put a bunk bed in her friend’s dining room.

When asked how she knew S.M. had been abused in every placement, she said that, as his mother, she found out everything. S.M. would tell her and she would visit him and see his bruises. She said she had visited S.M. only four or five times in six months because she was afraid to see him. He was always abused when she saw him and she was afraid that he, like her daughter, would be killed. She said it did not matter why S.M. had bruises. She had read the reports that S.M. would lose control and require physical restraint, but he did not deserve bruises, no matter how bad his behavior.

She stated that the Department had done nothing to help her see S.M., but she admitted she had not taken the social worker up on her offers of transportation because

she did not want to ride with the social worker. Mother explained, “Because I don’t -- I have my choices. I don’t even care about -- look at the stuff she writes about me. Why would I want to ride with her?”

When asked what she had done to make herself a better parent, she said, “I have been there for [S.M.]. Not since he’s been with the system because I don’t want to deal with them. I can’t deal with them. It will drive me crazy. I can’t. I cannot deal with the Department no more, they have done nothing but ruin my life. And if I don’t put a stop to it now, they’re going to ruin my kid’s life and my kid’s kids’ life. And I cannot do this. I have to make a stand for me and my children. I didn’t deserve to have [S.M.] removed from me. I deserved to have help with him, not removed from me.”

Mother repeatedly stated she would not comply with the Department’s case plan, even if ordered by the court, insisting she wanted nothing to do with the Department.

At the conclusion of the hearing, the court noted that S.M.’s physical development, dental care, and so on, did not demonstrate he had been neglected, but were “normal types of things.” However, S.M. still had a great number of mental and emotional issues that were still unresolved, although he was doing noticeably better on his medication.

The court acknowledged Mother’s feelings about the Department, but stated she needed to work out some of her problems. She had not visited S.M. often, she had refused offers to assist in visiting him, and now she stated that she did not wish to visit him. She had been offered voluntary services and never attempted that approach. Since she failed to avail herself of voluntary services, the plan had become involuntary, and now the reunification plan was mandated by the court in order to reunify her with S.M. However, she refused to cooperate. The court stressed that reunification with S.M. required that she work with the Department.

The court found that return of S.M. to Mother would be contrary to his welfare. Reasonable efforts had been made to prevent or eliminate the removal of S.M. from his

home. The court found clear and convincing evidence that S.M. should be removed from the physical custody of Mother because there was a substantial danger to his physical health, safety, protection, and physical or emotional well-being if he were returned home. The court found that S.M. was suffering from severe emotional damage evidenced by extreme anxiety, depression, withdrawal, untoward aggressive behavior toward himself and others, and there were no reasonable means by which his emotional health could be protected without removing him from Mother's physical custody. Clear and convincing evidence showed that Mother had failed to reunify with S.M.'s half-siblings and had not made a reasonable effort to treat the problems leading to their removal. Parental rights of Mother as to a half-sibling had been permanently severed and Mother had not made a reasonable effort to treat the problems leading to that removal. The court stressed that Mother's failure to reunify with S.M. would be detrimental to him because of his close attachment to her.

The court found that S.M.'s placement was necessary and appropriate and that Mother had made no progress toward alleviating and mitigating the causes and necessity of the placement in foster care. Mother had completely refused to cooperate. The court ordered family reunification services and ordered Mother to comply with the case plan. Mother repeatedly stated to the court that she would not comply with the court's requirements and could not work with the Department. The court informed her that this was an issue she needed to deal with in order to get S.M. back. She told the court, "I can't deal with it if I have to work with them again, Your Honor. Do you understand that? I can't deal with it. [¶] ... [¶] You might as well take my son and keep him, because I can't do it. I can't. [¶] ... [¶] I can't do it, especially when they write lies and bullshit about me. I'm a good mother."

## **DISCUSSION**

### ***I. Sufficiency of the Petition***

We need not decide whether, as Mother contends, the petition failed to state a cause of action under section 300, subdivision (c), or whether Mother waived this contention, because Mother is required to show prejudice on appeal and there is no prejudice from a pleading that fails to state a cause of action if, in the end, sufficient evidence supports the judgment. (*In re Athena P.* (2002) 103 Cal.App.4th 617, 627.) The real question, then, is sufficiency of the evidence.

### ***II. Sufficiency of Evidence to Support Jurisdiction***

Mother contends the jurisdiction finding was error because there was insufficient evidence that she would cause S.M.'s harm or that she was incapable of providing appropriate care for him.

“The petitioner in a dependency proceeding must prove by a preponderance of the evidence that the child ... comes under the juvenile court’s jurisdiction. (§ 355.) On review, this court will view the juvenile court record in the light most favorable to that court’s order. [Citation.] We may not reweigh or express an independent judgment on the evidence, but must decide only whether sufficient evidence supports the findings of the juvenile court. [Citation.] Issues of fact and credibility are matters for the trial court alone; we may decide only ““whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact.’ [Citation.]”” (*In re Amy M.* (1991) 232 Cal.App.3d 849, 859-860.) In dependency proceedings, a trial court’s determination will not be disturbed unless it exceeds the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

Section 300, subdivision (c) states that a child who comes within the following description is within the jurisdiction of the juvenile court and may be adjudged a dependent thereof: ““The minor is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety,

depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care....” ““The statute thus sanctions intervention by the dependency system in two situations: (1) when parental action or inaction causes the emotional harm, i.e., when parental fault can be shown; and (2) when the child is suffering serious emotional damage due to no parental fault or neglect, but the parent or parents are unable themselves to provide adequate mental health treatment.’ [Citation.]” (*In re Shelley J.*(1998) 68 Cal.App.4th 322, 329.) Because section 300 contemplates that jurisdiction may be based on any single subdivision, a judgment must be affirmed if substantial evidence supports jurisdiction under any subdivision. (*Id.* at p. 330.) By extension, since section 300, subdivision (c) disjunctively allows jurisdiction for a child suffering serious emotional damage “as a result of the conduct of the parent ... or who has no parent ... capable of providing appropriate care,” either is sufficient alone. (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, fn. 11.)

Here, all parties agree that S.M. suffered from serious emotional problems. However, Mother stresses that the evidence did not support a finding that she refused to participate in all voluntary services. She explains that she initially agreed to voluntary services, but changed her mind when she saw a reference to a six-month plan. She argues she cannot be faulted for having failed to seek counseling or secure the proper medication for S.M. because she was on a waiting list for services at the time S.M. was removed.

But the record contains ample evidence that Mother had not shown herself capable of appropriately handling S.M.’s serious emotional problems. The record depicts S.M. as an extremely difficult and troubled child who needed discipline and stability. Mother was frustrated with S.M.’s refusal to mind her and help around the house. She repeatedly called the sheriff to complain about S.M.’s behavior. She stated that she could no longer control S.M., that he had exhibited violence toward her, and that she feared he would hurt her. She asked that S.M. be removed from her home. S.M. was also afraid he might hurt

Mother. He described the home as full of yelling, screaming, and domestic violence. He felt a responsibility to protect Mother from her violent boyfriends. And he was frustrated with Mother's lifestyle and with her unsympathetic and aggressive approach to his emotional problems.

After S.M.'s detention, Mother's ability to provide appropriate care for S.M.'s emotional problems did not improve. She absolutely refused to work with the Department in creating a case plan. She failed to keep most of her scheduled visits with S.M. and, when she did visit, S.M.'s behavior generally deteriorated. She missed her Christmas visit with S.M. because she was too busy. She repeatedly failed to return S.M.'s telephone calls. S.M. was traumatized by her apathy and rejection.

With the help of medication, S.M. was improving and gradually learning to control his emotions and violent aggressions. His academic performance was also improving. But, despite these strides, Mother intractably refused to cooperate with the Department to work toward reunification with S.M. Instead, her interactions with the Department were aggressive and uncooperative. She insisted the Department was abusing S.M., although she knew S.M. was violent and the Department told her he frequently required restraint.

In sum, there is more than enough evidence to support the jurisdictional findings by the juvenile court pursuant to subdivision (c) of section 300.

## ***II. Sufficiency of Evidence to Support Removal***

Mother contends the court erred in removing S.M. from her custody. She asserts there was no clear and convincing evidence warranting removal, the court should have considered less drastic measures, and the court failed to state a sufficient factual basis for its removal order.

When a parent challenges a dispositional finding, the question is whether substantial evidence supports the finding. (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078; *In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581 [although



trial court makes findings by the elevated standard of clear and convincing evidence, substantial evidence test remains the standard of review on appeal].) In resolving this question, we view the evidence in the light most favorable to the trial court's determination, drawing all reasonable inferences in favor of the determination and affirm the order even if there is other evidence supporting a contrary conclusion. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

As relevant here, before the court may order a child physically removed from his or her parent, it must find by clear and convincing evidence that the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal, or that the child is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or others, and there are no reasonable means by which the child's emotional health may be protected without removal. (§ 361, subd. (c)(1) & (3).) A removal order is proper if it is based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) The parent's level of denial is an appropriate factor to consider when determining the risk to the child if placed with that parent. (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044 [denial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision].) The parent need not be dangerous and the child need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. (*In re Diamond H.*, *supra*, 82 Cal.App.4th at p. 1136; *In re Jamie M.* (1982) 134 Cal.App.3d 530, 536, citing *In re B.G.* (1974) 11 Cal.3d 679, 699.)

Here, again, a wealth of evidence supports the juvenile court's findings that S.M. should be removed from the physical custody of Mother because there was substantial danger to his physical health, safety, protection, and physical or emotional well-being if he were returned home, and that S.M. was suffering from severe emotional damage evidenced by extreme anxiety, depression, withdrawal, untoward aggressive behavior toward himself and others, and there were no reasonable means by which his emotional health could be protected without removing him from Mother's physical custody. The same points discussed above apply here because at the time of disposition Mother had shown no progress toward dealing with those problems. She had done nothing to improve her ability to manage S.M. and his problems, other than deciding she should approach the Big Brother program. She remained insistent that she would never cooperate or work with the Department, even if her refusal meant she would permanently lose custody of S.M. She accused the Department of abusing S.M. although she knew he often required physical restraint. She insisted all S.M. needed was a male role model and that she was otherwise a good mother.

This evidence amply demonstrated Mother's lack of understanding and appreciation of the severity of S.M.'s emotional problems and the risk of harm posed by her inability to provide appropriate care and work with the Department for S.M.'s benefit. The juvenile court could reasonably have concluded under these circumstances that Mother lacked the ability or skills to provide proper care for S.M. and that return to her would create a substantial danger to his well being. The evidence reasonably supports a finding that S.M. was not going to get the services he needed unless he was removed from Mother's custody.

Mother also argues the court erred by failing to consider a less drastic alternative. Yet the only alternative presented by Mother was that she receive custody of S.M., in her friend's one-bedroom home, and raise S.M. as she saw fit. She plainly stated she would not permit any involvement by the Department and she steadfastly refused to deal with

the Department. Thus, Mother's assertion that she consistently stated she would do whatever was asked of her as long as S.M. remained with her is nonsense, and is supported by a single statement she made at the detentional hearing. Otherwise, the record is replete with evidence that Mother consistently refused to do what was asked of her.

Mother also claims she testified at the dispositional hearing that she would be willing to continue giving S.M. whatever medication the court ordered. However, she explained she would comply because the court required her compliance for her to get S.M. back, not because she was motivated to properly care for S.M. and improve his circumstances. Further, her assurance immediately followed her testimony that she believed S.M.'s medication could cause brain damage, that she did not believe in medicating a child, that she refused to speak to the psychiatrist because he worked for the Department, and that the medication was ruining S.M.

We have no doubt whatsoever that substantial evidence supports the conclusion that Mother would not likely ensure that S.M. continued to receive the proper medication. The court reasonably concluded at the time of the hearing there were no alternatives to removal from Mother's custody.

Mother further asserts the court erred by not stating a factual basis for its order. (§ 361, subd. (d) [court shall state the facts on which the decision to remove the minor is based].) Failure to make the required findings under section 361 is error, but we may infer the basis from the evidence. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218-1219; *In re Corienna G.* (1989) 213 Cal.App.3d 73, 83.) If the evidence is sufficient to support the basis, as we have found it to be here, any error is harmless. (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 171; *In re Diamond H.*, *supra*, 82 Cal.App.4th at pp. 1136-1137 [any error is harmless because it is not reasonably probable such findings, if made, would have been in favor of continued parental custody].) Even assuming the court

should have more explicitly stated the reasons for removing S.M., we conclude there was no prejudice to Mother.<sup>2</sup>

**DISPOSITION**

The judgment (order) is affirmed.

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Dibiaso, Acting P.J.

WE CONCUR:

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Vartabedian, J.

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Buckley, J.

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<sup>2</sup> Like the juvenile court, we do not doubt that Mother feels sincere affection for her son, nor do we doubt that she feels a genuine fear of and revulsion for working with the Department, which she perceives as her enemy. Yet, like the juvenile court, we cannot avoid the conclusion that there was ample evidence that Mother was not able to manage S.M.'s difficult problems and seek the appropriate care and treatment. Ironically, that inability has now placed Mother in the position of having to work with the Department if she wants S.M. returned to her. It is our hope that she will find the strength to do so, based on her desire to help S.M., and that the Department will do what it can to make her steps toward reunification as tolerable and feasible as possible.